Supreme Court, U.S.
FILED

No. _____

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In The Supreme Court of the United States

In re CLYDE E. CLEMENTS, JR.,

Petitioner,

Petition for a Writ of Mandamus to the United States Court of Appeals for the Fourth Circuit; to the United States District Court for the Western District of Virginia; to the Supreme Court of Virginia, and; to the Twenty-Fourth Judicial Circuit of Virginia, Amherst County, Virginia Circuit Court

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PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

1. The question before the Court is whether the presiding federal district court judge's also presiding over and ruling in the hearing of petitioner-plaintiff's motion to vacate on grounds of Rule 60(b) fraud on the court by said judge (therefore presiding over a matter in which said judge personally was substantially affected by the outcome), together with said judge's threatening petitioner-plaintiff with sanctions if he appealed said judge's ruling and petitioner-plaintiff's not appealing because of said threat of sanctions, deprived petitioner-plaintiff of his Constitutionally guaranteed rights to petition the government for redress of grievances; and to due process of law.

2. This Court has a general policy of not exerting its jurisdiction merely to correct errors made by lower courts. The final question is whether this honorable Court accepts for review cases where, as here, the presiding courts below applied what is an apparent commonly known practice of knowingly entering in employment discrimination cases erroneous decisions favoring employer defendants–a practice that relies on said general policy of this Court for its existence.

PARTIES TO THE PROCEEDING

PETITIONER-PLAINTIFF: Clyde E. Clements, Jr.

RESPONDENT-DEFENDANTS: United States Court of Appeals for the Fourth Circuit Judges M. Blane Michael, Diana G. Motz and John D. Butzner, Jr.; United States District Court, Western Division of Virginia Judge James C. Turk; Supreme Court of Virginia Justices Barbara M. Keenan, A. Christian Compton and Richard K. Poff; Twenty-Fourth Judicial Circuit, Amherst, Virginia Circuit Judge J. Michael Gamble; BWX Technologies, Incorporated, formerly The Babcock & Wilcox Company; Employee Assistance of Central Virginia, Incorporated; Frank C. Allen, Jr.; Merle T. Alvis; Laurie L. Boykan; James A. Conner; John P. Eckert; John A. Fees; Susan S. Grainger; Robert E. Howson; Dewitt T. Lefew, III; Lawrence L. Lineberry; Lonza R. Pagans, Jr.; George K. Slough; Steven W. Smith; and Roger E. Tetrault.

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OPINIONS AND ORDERS OF THE COURTS BELOW

Petitioner-plaintiff Clyde E. Clements, Jr. respectfully prays for a writ of mandamus to review all of the decisions of the United States Court of Appeals for the Fourth Circuit; The United States District Court for the Western District of Virginia; The Supreme Court of Virginia, and; The Twenty-Fourth Judicial Circuit, Commonwealth of Virginia, that are set forth in the attached Appendix, *infra*, at App. A.1–B.17, and to direct said courts as requested in the Conclusion, *infra*.

STATEMENT OF JURISDICTION IN THIS COURT

The date of the orders and judgments of the federal appeals court and district court sought to be reviewed are December 9, 1996; January 12, 1996; November 27, 1995; June 26, 1996; April 24, 1995; March 7, 1995; January 13, 1995; January 13, 1995, and; September 9, 1994. The date of the orders and judgments of the state supreme court and state circuit court sought to be reviewed are October 31, 1997; September 9, 1997; January 27, 1997, and; January 7, 1997.

The jurisdiction of this Court is invoked under Section 1651(a) of Title 28, United States Code.

The following decisions sustain the power and jurisdiction of this Court to conduct the order and judgment review of which is herewith sought:

Kerr v. United States District Court, 426 U.S. 394 (1976)
Will v. United States, 389 U.S. 90 (1967)

La Buy v. Howes Leather Co., 352 U.S. 249 (1957)
Roche v. Evaporated Milk Ass'n, 319 U.S. 21 (1943)
Ex parte Peru, 318 U.S. 578 (1943)
Ex parte United States, 287 U.S. 241 (1932)

The special and unusual circumstances which warrant exercise by this Court of its discretionary power to issue the writ of mandamus, as requested in this petition, are set forth later under the heading "Reasons for Granting the Writ" (*infra*, p. 6).

STATEMENT OF THE CASE

Comes now, Clyde E. Clements, Jr., *pro se* petitioner-plaintiff, and respectfully represents:

1. Petitioner-plaintiff timely filed his employment discrimination complaint, civil action 92-0061-L, *Clements v. The Babcock & Wilcox Company, et al,* on October 30, 1992. Honorable James C. Turk ("Judge Turk"), judge of the United States District Court for the Western District of Virginia ("district court"), by his Order dated June 28, 1994, D.E. 21,[1] granted petitioner-plaintiff's motion for leave to file his Second Amended Complaint, which, among other things, added defendants and state tort claims (See Appendix at App. C.51).[2] Judge Turk, in his order dated September 9, 1994, D.E. 33, (See App. A.27), not only granted defendants' motion for reconsideration of said order

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[1] "D.E. __" refers to the docket entry numbers on the docket sheets maintained by the district court.

[2] The Appendix is attached, the pages of which are hereinafter referred to as "App. __.__".

granting petitioner-plaintiff's motion for filing of his Second Amended Complaint, the order also struck without explanation all of petitioner-plaintiff's state tort claims; and struck all defendants except Babcock & Wilcox, Alvis, Conner and Tetrault. Please note that petitioner-plaintiff had timely mailed to the new defendants named in his Second Amended Complaint a waiver of service form, which was returned by only one defendant; and petitioner-plaintiff's serving the Second Amended Complaint on said defendants was precluded by the district court's Order striking them from the complaint.

2. To preserve his state tort claims against all defendants named in said Second Amended Complaint filed in the district court, petitioner-plaintiff timely filed his motion for judgment, Law No. CL94000218-00, in the Twenty-fourth Judicial Circuit, Circuit Court of Campbell County, Virginia ("state circuit court") on September 19, 1994. The case was subsequently transferred to Amherst County, Virginia Circuit Court.

3. On January 4, 1995 petitioner-plaintiff filed his motion for the district court to compel defendants Babcock & Wilcox ("B&W"), Employee Assistance of Central Virginia, Inc. ("EAP"), and E. Wayne Sloop to answer fully his discovery requests; and to rule that harassment of plaintiff by defendants occurring after petitioner-plaintiff's discharge is relevant to his civil action. Also on January 4, 1995, a subpoena initiated by petitioner-plaintiff was issued to each of five witnesses to appear at the hearing of motions set for February 10, 1995, because of aforementioned B&W, EAP and Sloop's failure to answer fully said discovery requests. In his order dated January 12, 1995, D.E. 52 (See App. A.26), Judge Turk granted defendants' motion to quash

said petitioner-plaintiff's subpoenas. Petitioner-plaintiff, on February 6, 1995 filed with the district court his letter regarding cancellation of said February 10, 1995 hearing; and withdrawing his motion to compel. Petitioner-plaintiff filed on March 2, 1995 his motion to compel B&W to answer his second set of discovery requests. Judge Turk, by his order dated March 7, 1995, D.E. 62 (See App. A.24), granted defendants' motion to stay petitioner-plaintiff's discovery, even though petitioner-plaintiff had requested that the district court hear his motion to compel during the hearing of motions which had been set for March 9, 1995.

4. Judge Turk, by his order dated April 24, 1995, D.E. 68 (See App. A.9) granted defendants' motion for summary judgment on grounds that petitioner-plaintiff "...has not presented a shred of evidence...", "...has not presented a scintilla of evidence..." in support of his claims, even though the record included a genuine issue of material fact and proof that petitioner-plaintiff made out a prima facie case of retaliatory discharge, among other relevant evidence (See Petition for Writ of Certiorari, Case No. 95-1314, App. H).

5. Petitioner-plaintiff submitted his appeal with the United States Court of Appeals for the Fourth Circuit ("appeals court") on November 16, 1995. Honorable M. Blane Michael, Diana G. Motz and John D. Butzner, Jr., judges of the United States Court of Appeals for the Fourth Circuit ("federal appellate judges"), in their unsigned per curium opinion dated November 27, 1995 (See App. A.5), affirmed Judge Turk's order filed April 24, 1995 that granted defendants' motion for summary judgment. The federal appeals court, in its order filed January 12, 1996 (See App. A.3), denied petitioner-plaintiff's petition for rehearing, even though the appeals court's own case law

cited by petitioner-appellant required a decision favoring petitioner-plaintiff (See App. H).

6. This honorable Court, on April 15, 1996, denied Petitioner-plaintiff's petition for a writ of certiorari to the federal appeals court, Case No. 95-1314 (See App. H); and on June 3, 1996 denied his petition for rehearing.

7. Petitioner-plaintiff filed his motion for the federal district court to vacate Judge Turk's decision granting defendants' motion for summary judgment on grounds of Rule 60(b) fraud on the court by Judge Turk. D.E. 71, 73 (See App. C.20-C.47). Judge Turk, on June 26, 1996, presided over the hearing of petitioner-plaintiff's said motion and not only dismissed said motion as frivolous, he threatened petitioner-plaintiff with sanctions if he were to appeal his decision. D.E. 74, 75. See App. A.7.

8. Judge Turk, in his order entered June 27, 1996, D.E. 74, denied petitioner-plaintiff's Rule 60(b) motion to vacate on grounds of fraud on the court by Judge Turk (Judge Turk presided over a matter in which said judge personally was substantially affected by the outcome). Judge Turk states in said order that petitioner-plaintiff's allegation is "...totally devoid of merit..." and threatens petitioner-plaintiff with possible sanctions by the appeals court if he were to appeal Judge Turk's decision (See App. A.7). Petitioner-plaintiff did not appeal Judge Turk's order because of said threat of sanctions.

9. The federal appeals court, in its order filed December 6, 1996 (See App. A.1), dismissed "... in accordance with Local Rule 40(d)..." petitioner-plaintiff's motion to vacate on grounds of fraud on the court by the presiding appellate